

EXHIBIT 1

PLAINTIFF'S PROPOSED PRELIMINARY INSTRUCTION NO. 1

Overview of the Case

This is an action to recover damages for libel. A libel is a writing or broadcast which tends to expose the plaintiff to public hatred, contempt, ridicule or disgrace.

This case concerns the film series *When They See Us*, which was released on Netflix's global streaming platform on May 31, 2019. I will refer to *When They See Us* as the Series. The Series is a docudrama, or a fictionalization of real life events, and concerns a legal case stemming from multiple assaults and the rape of a female jogger in Central Park on April 19, 1989, which came to be known as the Central Park Jogger case. The Series addresses the arrests, trials and convictions of five young men for the rape of the female jogger, and the 2002 vacatur of their convictions. The five young men were labeled in the press as the "Central Park Five." The Series depicts the individuals involved in the Central Park Jogger case using their real names.

The plaintiff, Linda Fairstein, is a character in the Series who is portrayed using her real name. In April 1989, she was an Assistant District Attorney in the Manhattan District Attorney's office and the head of the Sex Crimes Prosecution Unit.

Linda Fairstein has sued three defendants in this case: 1) Netflix; 2) Ava DuVernay; and 3) Attica Locke. Netflix's employees were involved in the creation of the Series, and marketing and publicity for the Series. Ava DuVernay wrote, directed and produced the Series. Attica Locke, co-wrote and produced the Series.

Linda Fairstein claims that five scenes in *When They See Us* are false and defamed her and that the Defendants conspired to defame her. Defendants deny these allegations.

The five scenes that Linda Fairstein claims are false and defamatory are as follows:

Scene 1:

This scene appears in Episode 1 and shows Linda Fairstein directing the actions of members of New York City Police Department on the morning of April 20, 1989. At an unspecified point later in the day, she is seen sitting at a desk reviewing paperwork and placing Post-It notes on a map of Central Park. In the scene, Linda Fairstein concludes that young men in police custody are suspects rather than witnesses. Later, Linda Fairstein meets with detectives, and proposes altering the timeline of attacks to account for the rape of the female jogger in Central Park.

Scene 2

This scene appears in Episode 1. As depicted in Scene 2, Linda Fairstein instructs detectives not to use “kid gloves” shortly before they interrogate a 14-year old who is in police custody without a parent present.

Scene 3

This scene appears in Episode 1. As depicted in Scene 3, Linda Fairstein instructs members of the New York City Police Department that “every young black male who was in the park last night is a suspect in the rape of the woman who is fighting for her life right now.” She then instructs detectives to get “an army of blue up in Harlem. You go into those projects and stop every little thug you see. You bring in every kid who was in the park last night.”

Scene 4

This scene appears in Episode 2. Scene 4 depicts a conversation between Linda Fairstein, an Assistant District Attorney named Elizabeth Lederer and the Manhattan District Attorney Robert Morgenthau in which Linda Fairstein, using derogatory language about the five young men charged with the rape of the female jogger, discloses the late discovery of a semen-marked sock belonging to the female jogger that can be tested on the eve of trial.

Scene 5

This scene appears at the end of Episode 4. Scene 5 depicts Assistant District Attorney Nancy Ryan, who moved to vacate the convictions of the five men, accusing Linda Fairstein of coercing their confessions. Ryan supports her conclusion by asserting that she pored over Fairstein’s confession tapes and reconstructed the events of April 19, 1989 “minute by minute.”

During the trial you will have the opportunity to watch the full Series so that you can view the five scenes that Linda Fairstein claims are false and defamatory in the context of the Series as a whole.

I will now give you a brief overview of the legal issues that will arise in the case. In order to prevail on her libel claims, Linda Fairstein will need to prove, among other things, that at least one of the allegedly libelous scenes:

1. is false; and
2. is defamatory, in the context of the Series as a whole, meaning that it tended to expose Linda Fairstein to ridicule, disgrace, contempt, or public hatred. A statement is also defamatory if it tends to discredit Linda Fairstein in the conduct of her occupation, profession, trade or office.

If she proves these elements, Linda Fairstein will then have to prove actual malice, or that each defendant acted with the knowledge that each scene was false, or had serious doubts as to the truth of each scene. Each element of her libel claims are subject to a specific burden of proof which I will explain in a separate and more detailed instruction at a later time.

If Linda Fairstein proves the elements of her libel claims with respect to a particular scene, then you can presume that the scene caused her harm. It will then be your job to determine whether she suffered damages ranging from one dollar to a more substantial sum.

Linda Fairstein may also prove that the defendants participated in a conspiracy to defame her. To do this, she must first prove the elements we discussed with respect to at least one of the five scenes and one defendant. She must further prove, among other things, an agreement between two or more defendants to defame her.

At the conclusion of each side's presentation of the evidence, I will provide you with detailed instructions of law that will displace these preliminary comments and govern your deliberations in this case.

The trial will now begin. Lawyers for each side will make an opening statement.

Opening statements are intended to assist you in understanding the significance of the evidence that will be presented. The opening statements are not evidence.

After the opening statements, the Plaintiff will present her case through witness testimony and documentary or other evidence. Next, the Defendants will have an opportunity to present their case. Plaintiff may then present rebuttal evidence. After all the evidence is introduced, the lawyers will then make closing arguments, and I will instruct you on the law that applies to this case.

Keep an open mind during the entire trial. Do not decide the case until you have heard all of the evidence, the closing arguments, and my instructions.

Source:

N.Y. PJI 3:23, 3:24, 3:29 and cmts.; *Fairstein v. Netflix, Inc.*, 553 F. Supp. 3d 48 (S.D.N.Y. 2021); *Fairstein v. Netflix, Inc.*, 20-cv-8042, 2023 WL 6125631 (S.D.N.Y. Sept. 19, 2023); *Palin v. N.Y. Times Co.*, 1:17-cv-04853 (S.D.N.Y.), Court's Prelim. Instr. to the Jury, Feb. 3, 2022 Tr. at 74:8–77:6 (modified as to element of actual malice and damages).